THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.10042 OF 1998

DATED: 06-06-2007

Between:

The Regional Provident Fund Commissioner, Sub-Regional Office, Nyaikal Road, Nizamabad.

.. Petitioner

and

The Employees Provident Fund Appellate Tribunal, 7th Floor, 60 Skylark Building, Nehru Place, New Delhi and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.10042 OF 1998

ORDER:

This writ petition is filed seeking a certiorari to call for the records relating to the order, dated 05.01.1998, in ATA 1 (1)/97 on the file of the 1st respondent – Employees' Provident Fund Appellate Tribunal, New Delhi, and quash the same as illegal and unjust.

The facts, in brief, are that under Section 1 (3) (b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act'), a notification was issued on 17.05.1977 bringing the Beedi industry under the purview of the Act. Thereupon, the Beedi Manufacturers' Association filed a batch of writ petitions before the Supreme Court of India challenging the said notification. Initially, stay was granted in the said writ petitions, but, ultimately, the writ petitions were dismissed on 25.09.1985. Thereafter, the Central Government constituted a tripartite committee for implementation of the provident fund scheme in respect of Beedi industries. The recommendations of the tripartite committee were that the employees' share of contributions for the period from June 1977 to September 1985, in the above background, was to be exempted unless and otherwise the employees and employers themselves come forward to pay the past contributions in lump sum or in easy installments. The waiver of employees' share was subject to condition that the employer shall pay the entire amount of contribution payable by themselves immediately and, if the amount

is being remitted in instalments already granted, such amount shall be paid in full on or before 31.03.1990. There is no dispute that the 2nd respondent- Beedi factory had complied with the recommendations of the tripartite committee constituted by the Central Government by depositing the employers' share of provident fund. But, thereafter, it appears, the petitioner exercised his power vested under Section 14-B of the Act for the purpose of collecting damages for the period of stay granted by the Supreme Court. It is the case of the petitioner that he had paid 12% interest against the employees' share during the said period of stay to the members and, therefore, he is entitled to collect the damages for the said period. Aggrieved by the same, the 2nd respondent had approached the 1st respondent-Employees' Provident Fund Appellate Tribunal and filed an appeal under Section 7-I of the Act. The same was disposed of on 05.01.1998 holding that the 2nd respondent is not liable to pay any damages and, accordingly, the order passed by the petitioner was set aside. Aggrieved by the same, this writ petition is filed.

Learned counsel for the petitioner, Sri R.N. Reddy, strenuously contended that the Tribunal went wrong in applying the principles laid down in the case of **Christian Medical College and Brown Memorial Hospital vs. Regional Provident Fund Commissioner, Chandigarh**[1], wherein the Supreme Court, while disposing of the writ petition, added a rider that no damages shall be recovered from the employers while collecting the provident fund of employers' share and the employees are not entitled for interest. It is his case that the Supreme Court had simply dismissed the writ petitions filed by the employers in this case and held that the notification be given effect to from the date it was published and no such rider, as was added in the Christian Medical College case (1 supra), was added in the writ

petitions. Therefore, the petitioner is entitled to recover interest at 12% under Section 14-B of the Act.

Whereas the learned counsel for the 2nd respondent contended that, in pursuance of the recommendations of the tripartite committee, the 2nd respondent had deposited the amount as required by the committee and the committee never recommended for collecting any interest, as such, they are not liable for payment of interest, whether it is paid by the petitioner to the members or otherwise.

It is not in dispute that the tripartite committee has never recommended for collection of interest on the employers' share deposited by the employers as per the recommendations of the committee. Therefore, the contention of the learned counsel for the petitioner that since there was no rider added by the Apex Court in its Judgment while dismissing the writ petitions filed by the employers herein and as there was no embargo imposed by the tripartite committee for collecting damages by way of interest, the petitioner authority has invoked the powers vested in him under Section 14-B of the Act and, as such, sought for damages of 12% interest, since 12% interest was paid to the members.

Since it is admitted that a tripartite committee was constituted after the Judgment of the Supreme Court to go into the aspect of payment of amounts towards provident fund and said committee has not recommended for collecting damages etc., it does not lie in the mouth of the petitioner authority to say that since there was no embargo by the committee to collect dames, it can do so as per Section 14-B of the Act. In fact, nothing prevented the petitioner from not paying the interest to the employees, as was recommended in Christian Medical College case (1 supra). In this case, instead of doing that, the petitioner has invoked the power under Section 14-B of the Act arbitrarily and passed an order, which was rightly set aside by

the appellate tribunal. I am of the opinion that the 1st respondent-appellate tribunal has not committed any error calling for interference of this Court under Article 226 of the Constitution of India. This writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

-

C.V. RAMULU, J

6th June, 2007.
IBL

---

[1] 1988 (2) LLJ 379